

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

UNITED STATES OF AMERICA)

) Case No. 2:99CR10052

)

v.)

OPINION AND ORDER

)

IRA STANFORD MULLINS, JR.,)

By: James P. Jones

)

Chief United States District Judge

Defendant.)

Randy Ramseyer, Assistant United States Attorney, Abingdon, Virginia, for United States; Ira Stanford Mullins, Jr., Pro Se Defendant.

The defendant, Ira Stanford Mullins, Jr., has filed a “Motion to Compel Specific Performance of the Government’s Agreement.” Mullins asserts that the government should move for a reduction in his criminal sentence, pursuant to Fed. R. Crim. P. 35(b), based on substantial assistance he offered to Canadian authorities relating to a murder prosecution. Upon review of the motion, I find that it must be denied.

Mullins was convicted and sentenced in this court for bank robbery and related offenses in 2000. He did not appeal. In 2001, he filed a Motion to Vacate, Set Aside or Correct Sentence, pursuant to 28 U.S.C.A. § 2255 (West 2006), which was dismissed. *See United States v. Mullins*, No. 7:01CV00251 (W.D. Va. July 30, 2001), *appeal dismissed*, 30 F.App’x 93 (4th Cir. 2002) (unpublished). Mullins now claims that in 2000-2001, while he was incarcerated at a federal prison facility in South

Carolina, he informed authorities about another inmate's confession to murder and that his testimony at the inmate's trial contributed to the man's conviction. Mullins presents documentation purporting to demonstrate that Canadian authorities promised to inform United States officials about the assistance Mullins had offered in relation to the murder trial. The Canadian officials stated that Mullins gave key testimony that helped convince a jury to convict the defendant in the murder trial. Mullins also alleges that because of his assistance to authorities, other inmates have threatened his safety and as a result, he has been moved to several different federal prisons and has been housed in protective custody, isolated from others.

The decision to make a Rule 35(b) motion for sentence reduction based on a defendant's substantial assistance rests entirely within the discretion of the prosecutor's office. *United States v. Butler*, 272 F.3d 683, 686 (4th Cir. 2001). A district court has authority to review a prosecutor's refusal to file a substantial assistance motion and grant a remedy only if the defendant makes an adequate showing that the refusal was "based on an unconstitutional motive, such as racial or religious animus, or is not rationally related to any legitimate Government end." *Id.* at 686 (internal quotation marks omitted) (citing *Wade v. United States*, 504 U.S. 181, 185-86 (1992)). Generalized allegations that petitioner provided substantial assistance and that the government had some improper motive for failing to make a

promised motion for reduction are insufficient to warrant discovery or an evidentiary hearing, let alone granting relief. *Wade*, 504 U.S. at 186.

I asked the government to respond to Mullins's motion. Counsel responded, stating that he was unaware of any agreement that any official of the United States had made to Mullins concerning a possible motion for reduction of sentence based on Mullins's substantial assistance to Canadian law enforcement authorities. Counsel also noted that Mullins had failed to submit any documentation to support his claim that he assisted Canadian authorities. After the government's response, Mullins submitted documentation indicating that he did offer testimony in a Canadian murder trial and that Canadian authorities believed his testimony to have been critical in persuading the jury to convict.

Upon review of the motion, I cannot find that Mullins has demonstrated sufficient grounds for specific performance, since he fails to demonstrate that any official of the United States government ever made any agreement to move for a sentence reduction in his case based on his assistance to Canadian law enforcement authorities. Without the existence of an agreement, the court cannot order specific performance.

For the stated reasons, it is **ORDERED** that the defendant's motion (Dkt. No. 32) is DENIED.

The clerk will send a copy of this order to the defendant at his current place of confinement.

ENTER: September 25, 2007

/s/ JAMES P. JONES
Chief United States District Judge